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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

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11 HARBORVIEW FELLOWSHIP, a
Washington non-profit corporation,

12 Plaintiff,

13 v.

14 JAY INSLEE, Governor, in his official
capacity, SECRETARY OF HEALTH
15 JOHN WIESMAN, in his official
capacity, ROBERT FERGUSON, in his
16 official capacity as Attorney General of
Washington, PAUL PASTOR, in his
17 official capacity as Pierce County
Sheriff, and ANTHONY L-T CHEN, in
18 his official capacity as Director of
Health Tacoma-Pierce County Health
Department,

19 Defendants.
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CASE NO. 3:20-cv-05518-RJB

ORDER ON MOTION TO DISMISS

21 This matter comes before the Court on Defendant Dr. Anthony L-T Chen's Motion to
22 Dismiss. Dkt. 67. The Court has considered the pleadings filed regarding the motion and the
23 remaining file.
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1 In this case, the Plaintiff, a nondenominational church in Pierce County, Washington,
2 challenges portions of the Washington State “Safe Start Reopening Plan” entitled “Requirements
3 for Religious Worship” which were instituted in response to the COVID-19 pandemic. Dkt. 1.

4 Dr. Chen now moves for dismissal of the claims asserted against him. For the reasons
5 provided below, Dr. Chen’s motion (Dkt. 67) should be granted and he should be dismissed from
6 this case.

7 **I. FACTS**

8 On June 1, 2020 the Plaintiff filed this case against Washington State Governor Jay
9 Inslee and the Washington Secretary of Health John Wiesman asserting that the “Requirements
10 for Religious Worship” violated its First and Fourteenth Amendment rights under the U.S.
11 constitution via 42 U.S.C. § 1983, and the Washington State Constitution. Dkt. 1. The First
12 Amended Complaint added Washington’s Attorney General Robert Ferguson as a Defendant.
13 Dkt. 27. On June 8, 2020, the Plaintiff’s motion for a temporary restraining order was denied.
14 Dkt. 42.

15 The Plaintiff was granted leave to file a second amended complaint. In its Second
16 Amended Complaint, the Plaintiff names Pierce County Sheriff Paul Pastor and Dr. Chen, head
17 of the Tacoma-Pierce County Health Department, as Defendants. Dkt. 53. As to Dr. Chen, the
18 Second Amended Complaint alleges only that:

19 Dr. Chen, under RCW 70.05.070, has the authority to enforce the public health
20 statutes of the state and rules of Secretary Wiesman as well as take any act
21 necessary to maintain health and sanitation supervision over Pierce County. He
22 exercised this authority on August 12, 2020 to prohibit in-person schooling and
23 mandate that all schools—public and private—begin the school year using
24 distance learning.

Dkt. 53, at 8. The Second Amended Complaint asserts claims for violations of the first
amendment to the U.S. constitution’s protections of freedom of religion and speech. Dkt. 53.

1 The Second Amended Complaint seeks declaratory and injunctive relief as well as “judgment for
 2 all damages authorized under federal law, including under 42 U.S.C. § 1983,” and attorneys’ fees
 3 and costs. *Id.*

4 Dr. Chen now moves for dismissal of the claims asserted against him arguing that the
 5 Second Amended Complaint fails to state a claim against him because (1) it fails to allege that he
 6 personally participated in any alleged deprivation of a constitutional right, (2) it fails to allege
 7 sufficient facts that he acted with discriminatory intent, and (3) the Plaintiff lacks standing to
 8 assert claims against him because it only raises issues around the mere possibility of a penalty.
 9 Dkt. 67. The Plaintiff opposes the motion. Dkt. 69. Dr. Chen filed a reply (Dkt. 71) and the
 10 motion is ripe for review. (Dr. Chen also moved for qualified immunity. After the Plaintiff
 11 clarified that it is only making claims against Dr. Chen in his official capacity, Dr. Chen
 12 acknowledged that a ruling on qualified immunity is not appropriate at this time.)

13 **II. DISCUSSION**

14 **A. MOTION TO DISMISS STANDARD**

15 Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a
 16 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.
 17 *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations
 18 are taken as admitted and the complaint is construed in the plaintiff’s favor. *Keniston v. Roberts*,
 19 717 F.2d 1295 (9th Cir. 1983). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss
 20 does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his
 21 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the
 22 elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955,
 23 1964-65 (2007)(*internal citations omitted*). “Factual allegations must be enough to raise a right
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1 to relief above the speculative level, on the assumption that all the allegations in the complaint
 2 are true (even if doubtful in fact).” *Id.* at 1965. Plaintiffs must allege “enough facts to state a
 3 claim to relief that is plausible on its face.” *Id.* at 1974.

4 **B. SECTION 1983 GENERALLY AND PERSONAL PARTICIPATION**

5 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the
 6 conduct complained of was committed by a person acting under color of state law, and that (2)
 7 the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or
 8 laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other*
 9 *grounds, Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to
 10 remedy an alleged wrong only if both of these elements are present. *Haygood v. Younger*, 769
 11 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986). To state a civil rights claim,
 12 a plaintiff must set forth the specific factual bases upon which he claims each defendant is liable.
 13 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Vague and conclusory allegations of
 14 official participation in a civil rights violations are not sufficient to support a claim under § 1983.
 15 *Ivey v. Board of Regents*, 673 F.2d 266 (9th Cir. 1982).

16 The Plaintiff’s claims against Dr. Chen should be dismissed. The Plaintiff has failed to
 17 allege any facts which support its claims Dr. Chen personally participated in alleged violations of
 18 Plaintiff’s U.S. Constitutional rights. There is no allegation that Dr. Chen drafted the
 19 “Requirements for Religious Worship” or in any other manner personally participated in a
 20 deprivation of the Plaintiff’s rights. The Second Amended Complaint merely states that Dr.
 21 Chen has the authority to enforce public health laws and that, at one point in August 2020, he
 22 restricted schools in Pierce County to distance learning education. “Liability under section 1983
 23 arises only upon a showing of personal participation by the defendant.” *Taylor v. List*, 880 F.2d
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1 1040, 1045 (9th Cir. 1989). No such showing is made on the facts alleged in the Second
2 Amended Complaint. The motion to dismiss should be granted and the claims asserted against
3 Dr. Chen should be dismissed.

4 The Court need not reach Dr. Chen's remaining arguments regarding the Plaintiff's
5 failure to properly plead its claims against him.

6 **C. STANDING**

7 "[N]o principle is more fundamental to the judiciary's proper role in our system of
8 government than the constitutional limitation of federal-court jurisdiction to actual cases or
9 controversies. One element of the case-or-controversy requirement is that plaintiffs must
10 establish that they have standing to sue." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408
11 (2013)(*internal quotation marks and citations omitted*). "A plaintiff seeking to establish
12 standing must show that: (1) he or she has suffered an injury in fact that is concrete and
13 particularized, and actual or imminent; (2) the injury is fairly traceable to the challenged
14 conduct; and (3) the injury is likely to be redressed by a favorable court decision." *W.*
15 *Watersheds Project v. Grimm*, 921 F.3d 1141, 1146 (9th Cir. 2019).

16 Dr. Chen's motion to dismiss should also be granted because the Plaintiff has failed to
17 demonstrate that it has standing to sue him. It fails to carry its burden as to the second prong:
18 causation. The Plaintiff does not show that an alleged injury "was fairly traceable" to any action
19 or inaction by Dr. Chen. The Plaintiff points to actions of others – the governor, for example,
20 but does not point to any action or inaction by Dr. Chen which caused it injury. The Plaintiff
21 does not demonstrate that it has standing to sue Dr. Chen. His motion to dismiss the claims
22 against him for lack of standing should be granted.

23 **III. ORDER**

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1 It is **ORDERED** that:

- 2 • Defendant Dr. Anthony L-T Chen's Motion to Dismiss (Dkt. 67) **IS GRANTED**;
- 3 and
- 4 • The claims asserted against Dr. Chen **ARE DISMISSED**.

5 The Clerk is directed to send uncertified copies of this Order to all counsel of record and

6 to any party appearing *pro se* at said party's last known address.

7 Dated this 9th day of December, 2020.

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9 ROBERT J. BRYAN
10 United States District Judge

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